

REMARKS

This is a substitute response to the response filed on April 20, 2006. Applicants inadvertently responded to a prior Office Action and responded to the combination of *Metz* and *Birdwell* as opposed to replying to the Examiner's rejection in view of *Tarr* and *Birdwell* on October 20, 2005. Applicants apologize for this incomplete response.

First, in the prior response of April 20, 2006, Claim 1 and Claim 16 were replicated deleting certain portions of the claim without the correct delineations. The current claims reflect changes prior to the October 20, 2005 Office Action.

The Examiner has rejected Claims 1-2, 5, 10-11, 15-17, 20, 25-26 and 30 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,238,290 to *Tarr et al.* in view of U.S. Patent No. 6,002,852 to *Birdwell et al.* This rejection is respectfully traversed with respect to the claims as they are presently presented. This is responsive to the Office Action dated October 20, 2005.

The *Tarr* reference is a reference that allows a game manufacturer to distribute software associated with their games on a broadcast channel at preselected times. In the preferred embodiment, this provides for distribution of the software in 30 minute time slots, such that two different games will be distributed in the course of an hour or there may be multiple games during each half-hour time slot that could be selected by the user.

In operation, there are some inconsistencies in the specification. However, it appears that a CDROM is distributed to a "subscriber" which allows the subscriber to initiate the system. There is a primary processor and a secondary processor. The primary processor is operable to interface with the broadcast channel, download and decompress and decrypt the received information for storage in a local hard disk. The secondary processor is operable to interface with the CDROM and initiate the system. It is stated at Col. 5, lines 51-54 that "To prevent unauthorized acquisition of the video games and other content, the CD-ROM 38 also contains a program to decrypt the broadcast programs." This indicates that the CD-ROM controls the operation and provides information to the primary processor that is utilized for actually decrypting encrypted programs. However, it is not necessary for the primary processor to be turned on in order for a user interface screen to appear on the display. It is unclear as to where the information that is displayed, i.e., the various time slots, is

AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767

retrieved from. It appears that this information is on the CD-ROM such that the CD-ROM contains a listing of programs and time slots. By selecting one of these programs, the main processor is then activated to download and temporarily store this program on the hard disk. There is a provision wherein the user, while waiting for the game to download, can play other games that are disposed on the disk. Further, there is also provided an option where the user may order a game. This option is described beginning at Col. 8, line 30. If this option is available, then the user, at the end of playing a particular game, can then purchase the game if they so desire. However, when purchasing the game, it is set forth at Col. 8, lines 43-44 that "the order is processed and the item is shipped." This indicates that the user receives some type of CD-ROM or media with the game from another location and this is not downloaded from the broadcast channel. Thus, if the user desires to have a copy of the game on their system for playing, other than temporarily, then it must be purchased and received on a different media independent of the broadcast channel.

The Examiner has rejected the claims with respect to indications that *Tarr* discloses the use of a unique ID. The portion of the claim that the Examiner has indicated by being anticipated by *Tarr* is "one or more discrete software data streams designated for transmission on select ones of said one or more broadcast channels, each of the one or more discrete data streams having a unique ID associated therewith, which unique ID for each of the one or more discrete software streams is associated therewith by an associated software vendor and each of the unique IDs is unique to a user." The Examiner has indicated that this is anticipated by language in the *Tarr* reference at Col. 8, lines 46-57, wherein the Examiner indicates that, since the streams can be encrypted, they therefore would have a key unique to the user. The portion of the specification at issue is as follows:

The advantages of the present invention are numerous. The present invention supports cost effective and convenient (for the subscriber and the network provider) distribution of large amounts of data. The present invention also uses limited bandwidth on analog cable thereby eliminating expensive cable network upgrades. Furthermore, the present invention allows the network provider to deliver software written for video game and personal computer systems with minimal changes to the software/title as used in a stand-alone environment, i.e., addition of a wrapper, *encryption*, etc. Still further, the present invention is compatible with various video game systems available for purchase. (Emphasis added).

Applicants believe that the encryption is not unique to the user. Each subscriber or user

AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767

receives a CD-ROM. The CD-ROM is indicated as being a start-up CD-ROM. This is disclosed beginning at Col. 5, lines 45-58 with the following text:

To start up the system, the user inserts a start-up CD-ROM 38 into the CD-ROM drive 34. The CD-ROM 38 contains the device drivers and software which enable the PC or video game player to interact with the primary processor 18. The CD-ROM 38 also contains the software which enables the primary processor 18 to select and receive software programs from the head-end server 12. *To prevent unauthorized acquisition of the video games and other content, the CD-ROM 38 also contains a program to decrypt the broadcast programs.* The CD-ROM 38 may also contain multi-media content (e.g., graphics, animations, video clips and audio clips), software tools, programs (e.g., navigator), and software engines which can be used alone or with data that is broadcast over the network. (Emphasis added).

This paragraph indicates that “the CD-ROM 38 also contains a program to decrypt the broadcast programs.” This indicates that the CD-ROM, which is a read-only device, is shipped to each user. There is nothing that indicates that the encryption/decryption algorithm is unique to the user but, rather it is unique to the start-up CD. Applicants believe that the only purpose for this language is to ensure that any subscriber that receives a start-up CD-ROM will be allowed to access the information. This prevents other individuals not having access to the CD-ROM from accessing the downloaded data from the broadcast channels. As such, Applicants believe that there is no suggestion or disclosure that would in any way associate this decryption operation with the particular user and/or vendor and, as such, there is no unique ID that is associated with a software data stream of a software vendor or which unique ID is unique to a user. The decryption algorithm would be the same for all data streams downloaded, regardless of the vendor and regardless of the user. Applicants believe that each CD-ROM would have the same decryption algorithm. Thus, Applicants believe that Col. 8, lines 46-57 does not support the use of the unique ID limitation in the claims. Further, the Examiner has indicated that the language of the claims “each of said one or more discrete software data streams having associated therewith a unique ID associated therewith” is obviated by the language of the patent at Col. 6, lines 44-65. This language is set out as follows:

Turning now to FIG. 4, the method of the present invention may be more particularly described. As indicated above, the method is specifically directed for delivering a software program to a subscriber over a cable network which includes a head-end

AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767

server. In operation, a plurality of software programs are compressed 39 at the head-end server and transmitted 41 over the cable network at corresponding predetermined scheduled times. A primary processor comprising, for example, a customized low end PC and hard disk is provided 43 in communication with the cable network. A secondary processor comprising, for example, a game machine which includes a game CPU and CD-ROM drive is provided 45 in communication with the primary processor. Operating instructions are generated 47 at the secondary processor for receipt by the primary processor so as to enable the primary processor to select and receive one of the plurality of software programs from the cable network without upstream communication to the head-end server. The selected software program is thereafter received 49 at the primary processor at the corresponding predetermined scheduled time whereupon it is decompressed 51 and temporarily stored 53.

In this portion of the specification, the only indication provided with respect to any unique ID is that associated with the decompression on the fly operation. This actually does not require any decryption *per se*. This is only supported in the specification at Col. 5, lines 52-54. The decompression is not necessarily a function of an encryption/decryption algorithm. Therefore, this portion of the specification does not have anything to do with unique ID.

The Examiner has also indicated that the language of the claim “wherein said selected ones of said one or more discrete software data streams are downloaded via said receiver to said monitoring interface for filtering said discrete software data streams according to said respective unique IDs” is obviated by the language of the specification at Col. 8, lines 46-57. Applicants disagree with this, as there is no disclosure in the specification that in any way provides for any “filtering.” The decryption algorithm is merely a way to allow the system to download encrypted software. It is not downloaded in accordance with any respective unique ID. As such, Applicants believe that the *Tarr* reference does not in any way disclose or suggest the use of a unique ID that is unique to the vendor and the user, such that a specific user only would have access to the software. Therefore, *Tarr* fails to disclose such. The Examiner indicated that *Tarr* does not “explicitly teach” the aspect of downloading one or more unique data streams wherein the unique ID is deleted after downloading. The Examiner relies upon *Birdwell* for this teaching. However, *Birdwell* does not cure the deficiencies noted hereinabove with respect to *Tarr*. As such, Applicants respectfully note that the combination of *Tarr* and *Birdwell*, taken singularly or in combination, does not anticipate or obviate Applicants’ present inventive concept, as defined by the currently presented claims.

AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767

Therefore, Applicants respectfully request withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 1-2, 5, 10-11, 15-17, 20, 25-26 and 30.

Claims 3-4 and 18-19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,238,290 to *Tarr et al.* and in view of U.S. Patent No. 6,002,852 to *Birdwell* and further in view of U.S. Patent No. 5,666,293 to *Metz et al.* This rejection is respectfully traversed with respect to the currently presented claims.

Claims 3-4 and 18-19 are dependent claims. The addition of the *Metz et al.* reference does not cure the deficiencies noted hereinabove with respect to the combination of *Tarr* and *Birdwell*. As such, Applicants respectfully request the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 3-4 and 18-19.

Claims 6, 12-14, 21 and 27-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,238,290 to *Tarr et al.* in view of U.S. Patent No. 6,002,852 to *Birdwell* and further in view of U.S. Patent No. 5,894,516 to *Brandenburg*. This rejection is respectfully traversed with respect to the currently presented claims.

The Examiner has indicated that the portion of the *Tarr-Birdwell* combination that is not disclosed is that data streams are broadcast only during a specific time period. However, the *Brandenburg* reference still fails to cure the deficiencies noted hereinabove with respect to the original *Tarr* reference and the combination of *Tarr* and *Birdwell*. As such, Applicants believe that the addition of the *Brandenburg* reference with the *Tarr* and *Birdwell* references does not anticipate or obviate Applicants' prevent inventive concept, as defined by Claims 6, 12-14, 21 and 27-29 and, therefore, respectfully requests the withdrawal of the 35 U.S.C. §103(a) rejection with respect thereto.

Claims 7-8 and 22-23 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,238,290 to *Tarr et al.* in view of U.S. Patent No. 6,002,852 to *Birdwell et al.* and further in view of U.S. Patent No. 5,003,384 to *Durden*. This rejection is respectfully traversed with respect to the currently presented claims.

The Examiner has indicated that the *Tarr-Birdwell* combination does not explicitly teach an accounting device. However, the Examiner also indicates that the specification at Col. 9, lines 56-67

AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767

and the specification at Col. 10, lines 1-12 teach the use of unique IDs to represent one or more data streams. However, there is no such specification. Applicants do not know what the Examiner is referring to with respect to this portion of the rejection at paragraph 21 of the Office Action. In any event, Applicants believe that the addition of the *Durden* reference to the *Tarr-Birdwell* combination does not cure the deficiencies noted hereinabove. As such, Applicants respectfully request withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 7-8 and 22-23.

Claims 9 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,238,290 to *Tarr et al.* in view of U.S. Patent No. 6,002,852 to *Birdwell et al.* and U.S. Patent No. 5,003,384 to *Durden* and further in view of U.S. Patent No. 6,317,885 to *Fries*. This rejection is respectfully traversed in view of the currently presented claims.

The Examiner has indicated that the *Tarr-Birdwell-Durden* combination does not explicitly teach the use of a packet-switched global communication network to transmit accounting data. However, Applicants believe that the addition of the *Fries* reference to the *Tarr-Birdwell-Durden* combination does not cure the deficiencies noted hereinabove with respect to the *Tarr* reference. As such, Applicants respectfully request the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 9 and 24.

AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767

Applicants have now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicants respectfully request full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-24,767 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,
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AMENDMENT AND RESPONSE

SN: 09/417,863

Atty. Dkt. No. PHLY-24,767